

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ARTURO MONTERROSA**

Claimant

VS.

**EXCEL CORPORATION**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 213,966

**ORDER**

Claimant appeals from a November 20, 1996, preliminary hearing Order entered by Administrative Law Judge Kenneth S. Johnson.

**ISSUES**

The Administrative Law Judge denied claimant's request for medical benefits, finding claimant had failed to sustain his burden of proof that he suffered a work-related injury. The issue for Appeals Board review is whether claimant's alleged knee injuries arose out of and in the course of his employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review a finding regarding a disputed issue of whether the employee suffered an accidental injury which arose out of and in the course of his employment with respondent. See K.S.A. 44-534a, as amended.

Claimant seeks medical treatment for an alleged injury to his knees. The only medical opinion in the record is an October 1, 1996, report by Robert A. McKissick, M.D. Dr. McKissick stated that he examined claimant on January 29, 1996, and at that time

diagnosed a mild knee strain. There was a finding on the x-ray which the radiologist read to be a spur and of no serious consequence. The spur would have taken many years to develop. Dr. McKissick opined that the x-ray finding did not represent evidence of any structural damage to the knee and most likely indicated chronic tendinitis. Dr. McKissick did not relate any of claimant's knee problems to his work with respondent.

Claimant relates no specific incident or traumatic event having precipitated his onset of knee pain. Instead, claimant alleges a series of mini-traumas from constantly working on his feet. Unfortunately, there is no medical evidence supporting claimant's contention in this regard.

Based upon the record as it currently stands, the Appeals Board finds claimant has not met his burden of proving personal injury by accident arising out of and in the course of his employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Kenneth S. Johnson dated November 20, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1997.

---

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director